

## National Transportation Safety Board

## § 831.6

scene at the accident, testing, tear-down, etc.), report preparation, and, where ordered, a public hearing. The investigation results in Board conclusions issued in the form of a report or "brief" of the incident or accident. Accident/incident investigations are fact-finding proceedings with no formal issues and no adverse parties. They are not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 504 et seq.), and are not conducted for the purpose of determining the rights or liabilities of any person.

[62 FR 3806, Jan. 27, 1997]

### § 831.5 Priority of Board Investigations.

Any investigation of an accident or incident conducted by the Safety Board directly or pursuant to the appendix to part 800 of this chapter (except major marine investigations conducted under 49 U.S.C. 1131(a)(1)(E)) has priority over all other investigations of such accident or incident conducted by other Federal agencies. The Safety Board shall provide for the appropriate participation by other Federal agencies in any such investigation, except that such agencies may not participate in the Safety Board's determination of the probable cause of the accident or incident. Nothing in this section impairs the authority of other Federal agencies to conduct investigations of an accident or incident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, the transportation accident or incident, provided they do so without interfering with the Safety Board's investigation. The Safety Board and other Federal agencies shall assure that appropriate information obtained or developed in the course of their investigations is exchanged in a timely manner.

[62 FR 3807, Jan. 27, 1997]

### § 831.6 Request to withhold information.

(a) *Trade Secrets Act (18 U.S.C. 1905), Exemption 4 of the Freedom of Information Act (5 U.S.C. 552) (FOIA), and The Independent Safety Board Act of 1974, as amended.*

(1) *General.* The Trade Secrets Act provides criminal penalties for unauthorized government disclosure of trade secrets and other specified confidential commercial information. The Freedom of Information Act authorizes withholding of such information; however, the Independent Safety Board Act, at 49 U.S.C. 1114(b), provides that the Board may, under certain circumstances, disclose information related to trade secrets.

(2) *Procedures.* Information submitted to the Board that the submitter believes qualifies as a trade secret or confidential commercial information subject either to the Trade Secrets Act or FOIA Exemption 4 shall be so identified by the submitter on each and every page of such document. The Board shall give the submitter of any information so identified, or information the Board has substantial reason to believe qualifies as a trade secret or confidential commercial information subject either to the Trade Secrets Act or FOIA Exemption 4, the opportunity to comment on any contemplated disclosure, pursuant to 49 U.S.C. 1114(b). In all instances where the Board determines to disclose pursuant to 49 U.S.C. 1114(b) and/or 5 U.S.C. 552, at least 10 days' notice will be provided the submitter. Notice may not be provided the submitter when disclosure is required by a law other than FOIA if the information is not identified by the submitter as qualifying for withholding, as is required by this paragraph, unless the Board has substantial reason to believe that disclosure would result in competitive harm.

(3) *Voluntarily-provided Safety Information.* It is the policy of the Safety Board that commercial, safety-related information provided to it voluntarily and not in the context of particular accident/incident investigations will not be disclosed. Reference to such information for the purposes of safety recommendations will be undertaken with consideration for the confidential nature of the underlying database(s).

(b) *Other.* Any person may make written objection to the public disclosure of any other information contained in any report or document filed, or otherwise obtained by the Board, stating the grounds for such objection.

The Board, on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information may be withheld under the provisions of an exemption to the Freedom of Information Act (5 U.S.C. 552, see part 801 of this chapter), and its release is found not to be in the public interest.

[62 FR 3807, Jan. 27, 1997]

#### **§ 831.7 Right to representation.**

Any person interviewed by an authorized representative of the Board during the investigation, regardless of the form of the interview (sworn, unsworn, transcribed, not transcribed, etc.), has the right to be accompanied, represented, or advised by an attorney or non-attorney representative.

[62 FR 3807, Jan. 27, 1997]

#### **§ 831.8 Investigator-in-charge.**

The designated investigator-in-charge (IIC) organizes, conducts, controls, and manages the field phase of the investigation, regardless of whether a Board Member is also on-scene at the accident or incident site. (The role of the Board member at the scene of an accident investigation is as the official spokesperson for the Safety Board.) The IIC has the responsibility and authority to supervise and coordinate all resources and activities of all personnel, both Board and non-Board, involved in the on-site investigation. The IIC continues to have considerable organizational and management responsibilities throughout later phases of the investigation, up to and including Board consideration and adoption of a report or brief of probable cause(s).

[62 FR 3807, Jan. 27, 1997]

#### **§ 831.9 Authority of Board representatives.**

(a) *General.* Any employee of the Board, upon presenting appropriate credentials, is authorized to enter any property where an accident/incident subject to the Board's jurisdiction has occurred, or wreckage from any such accident/incident is located, and do all things considered necessary for proper investigation. Further, upon demand of an authorized representative of the

Board and presentation of credentials, any Government agency, or person having possession or control of any transportation vehicle or component thereof, any facility, equipment, process or controls relevant to the investigation, or any pertinent records or memoranda, including all files, hospital records, and correspondence then or thereafter existing, and kept or required to be kept, shall forthwith permit inspection, photographing, or copying thereof by such authorized representative for the purpose of investigating an accident or incident, or preparing a study, or related to any special investigation pertaining to safety or the prevention of accidents. The Safety Board may issue a subpoena, enforceable in Federal district court, to obtain testimony or other evidence. Authorized representatives of the Board may question any person having knowledge relevant to an accident/incident, study, or special investigation. Authorized representatives of the Board also have exclusive authority, on behalf of the Board, to decide the way in which any testing will be conducted, including decisions on the person that will conduct the test, the type of test that will be conducted, and any individual who will witness the test.

(b) *Aviation.* Any employee of the Board, upon presenting appropriate credentials, is authorized to examine and test to the extent necessary any civil or public aircraft (as specified in § 830.5), aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident in air commerce.

(c) *Surface.* (1) Any employee of the Board, upon presenting appropriate credentials, is authorized to test or examine any vehicle, vessel, rolling stock, track, pipeline component, or any part of any such item when such examination or testing is determined to be required for purposes of such investigation.

(2) Any examination or testing shall be conducted in such a manner so as not to interfere with or obstruct unnecessarily the transportation services provided by the owner or operator of such vehicle, vessel, rolling stock, track, or pipeline component, and shall